

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:18-cr-10249-WGY

4  
5 UNITED STATES OF AMERICA

6  
7 vs.

8  
9 MARK MOFFETT

10  
11 \*\*\*\*\*

12  
13 For Jury Trial Before:  
14 Judge William G. Young

15 **EXCERPT:** Closing Arguments

16  
17 United States District Court  
18 District of Massachusetts (Boston.)  
19 One Courthouse Way  
20 Boston, Massachusetts 02210  
21 Thursday, December 19, 2019

22 \*\*\*\*\*

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## P R O C E E D I N G S

(**EXCERPT** Begins.)

## CLOSING ARGUMENT BY MR. BASIL:

Good morning, ladies and gentlemen, thank you for your service on this jury. "I was the puppet master," you know those words, it's where we began, and it's where we end this case. The "puppet master," that's how he thought of himself, but that's also how he thought about other people, "puppets," the doctors, the nurses, the patients. Now they trusted him, they believed in him, they entrusted him with completion of these forms, and he used them to commit fraud. You've seen the false insurance letters, you've seen the false diagnoses, the false medication histories, medications patients were never on, the false lab values, lab values that don't exist anywhere except on the forms that he filled out. You've seen the false prescriptions.

The evidence here shows, beyond a reasonable doubt, that Mark Moffett committed insurance fraud and that he used his friends' identities to do it. For the next few minutes I'm going to walk you through the evidence that shows that. Let me start with what's called "The scheme to defraud."

Now you've heard a lot about HoFH, "Homozygous

1 Familial Hypercholesterolemia," what it is and what it  
2 isn't. Now you know it's a super rare disease and you  
3 know that it is not in any patient records you have seen  
4 in this case, not once, not ever. The doctors just did  
5 not have this diagnosis. And you've heard how important  
6 medical records are to these doctors. They know that  
7 other doctors are relying on them when they document  
8 care. They know that when they write down a diagnosis,  
9 another doctor is going to see it, and that means  
10 continuity of care for the patient. And you know from  
11 the doctors that the medication history matters because  
12 a doctor wants to know what meds the patient is on so a  
13 doctor doesn't prescribe a medication that causes a bad  
14 result. The doctors did not make this diagnosis.

15 You also know that HoFH is not in the marketing  
16 pitch from that man there. Yes, HoFH is in the official  
17 Aegerion documents, but you heard witness after witness  
18 tell you that when Moffett talked about this drug,  
19 Juxtapid, this \$300,000-a-year drug, he didn't say  
20 "HoFH," he said "statin intolerance and high  
21 cholesterol," that's way broader than HoFH. And you  
22 know it's true because you have Moffett's e-mails where  
23 he says the same thing.

24 When Moffett actually tells doctors how to use this  
25 drug and who to use it with, he doesn't say "HoFH."

1 When you go into the jury room, look at Exhibits 153,  
2 177, and 235, "patients with LDLC over 150," "patients  
3 that may be intolerant of statins," "LDL Refractory  
4 slash challenging," that's not HoFH, that's high  
5 cholesterol, that's statin intolerance, and you heard  
6 from the doctors that's not HoFH.

7 He even gives his own criteria for what kinds of  
8 patients he thinks they should use. Ladies and  
9 gentlemen, Mark Moffett is not a doctor, he does not get  
10 to diagnose patients, doctors do. The doctors are going  
11 to tell you, and you've heard them say, they were  
12 prescribing this drug off-label, exactly how he marketed  
13 it. You know where HoFH is in this case, it's on the  
14 insurance forms, in the writing you know, it's on the  
15 prior authorizations, it's in the false insurance  
16 appeals letters. And you know how HoFH got there, he  
17 put it there and you know he did because you've seen him  
18 do it.

19 This is his e-mail to Julie Santarelli and Tracy  
20 Shelabarger, "Under diagnosis code, don't put  
21 'hyperlipidemia,' just put '272.0 HoFH.' Sorry it's  
22 duplication, but insurance companies suck." Julie  
23 Santarelli and Tracy Shelabarger told you that Moffett  
24 told them to say that to get the insurance company to  
25 pay, and you know it's true because you have Exhibit

1 139, you can see him do it, "Don't put the real  
2 diagnosis, say HoFH."

3 Now, ladies and gentlemen, this is a \$300,000 a year  
4 contract with a narrow indication from the FDA. You've  
5 heard that this drug has a black-box warning, you know  
6 that you have to test every single month to make sure  
7 that there's no liver damage to the patient. Well the  
8 problem for Mr. Moffett is that there were no HoFH  
9 patients, none of these doctors had them, so he just  
10 marketed for something else, and the doctors prescribed  
11 it for something else.

12 But, ladies and gentlemen, Medicare Part D can't pay  
13 off-label, Medicare Part D pays for the medically-  
14 accepted indication and that, in this case, is the FDA  
15 approval. Medicare Part D doesn't pay for experimental  
16 uses, Medicare Part D pays for what is proven to work in  
17 the population it's proven to work in. That's the  
18 condition in the federal rules, and commercial plans  
19 have similar limitations. The insurance company, they  
20 look at the diagnosis, they look at the medication  
21 history. This information for them was material. They  
22 assumed and relied on the fact that there was a valid  
23 prescription issued by the physician.

24 "Here, Doctor, sign this," that's not a valid  
25 attestation, you have to know what you're doing when you

1 sign a document. These doctors never intended to attest  
2 to a diagnosis consistent with HOFH. And these facts  
3 were material, that means capable of influencing the  
4 insurance company's coverage decision. It doesn't mean  
5 the last final fact that determined everything they did,  
6 it just means capable of affecting their decision. And  
7 that's why Moffett said here, "Don't put  
8 hyperlipidemia," because he knew the insurance companies  
9 cared.

10 For Moffett, fraud was the answer. His motive was  
11 the bonus. And there they are, thousands of dollars  
12 each time he got this done. And later on, ladies and  
13 gentlemen, just for getting the paperwork, he got money.  
14 That is the scheme for fraud in this case.

15 Now at the beginning of this case we told you that  
16 we would prove two things beyond a reasonable doubt.  
17 First, that Moffett had a scheme to defraud by  
18 submitting false patient information, false diagnoses,  
19 to insurance companies, that's the first thing, and  
20 second, that he used the doctors' identities to do it,  
21 and you've heard that's their names, their NPI numbers,  
22 and their signatures. That's aggravated identity theft.  
23 You've now seen the evidence and you know the evidence  
24 proves he committed these crimes.

25 Judge Young is going to instruct you on all of the

1 elements of these crimes. He'll explain, for example,  
2 that wire fraud requires an interstate fax or an e-mail  
3 or a phone call, the wire doesn't have to be the thing  
4 that is fraudulent, it can just be in furtherance of the  
5 fraud scheme, and I expect Judge Young is going to give  
6 you a verdict slip that helps you see where the wires  
7 are for each of these.

8 I expect that Judge Young will tell you that you  
9 can convict Moffett whether he did everything by himself  
10 or whether there were some other people involved or  
11 whether he used other people to commit the fraud. So if  
12 you find that Moffett committed his crimes by using  
13 Marti Quinones, or Julie Santarelli, or Tracy  
14 Shelabarger, you can still find him guilty if he  
15 willfully used them to commit the crime.

16 Let's use -- let's go to an example of that. (On  
17 screen.) This is Mr. Moffett's e-mail to Marti Quinones  
18 telling her how to fill out the form, "Here are the  
19 answers for the attached form." He tells her to report  
20 a false diagnosis of HoFH. You know it's false because  
21 it's not in the medical record. You know it's false  
22 because Dr. Dande told you he didn't diagnose this  
23 patient with HoFH and he has never diagnosed any patient  
24 with HoFH. You know it's false because Allyson Gough  
25 didn't even know what HoFH was.

1           Moffett told Quinones to say that the patient had  
2           a skin fiberglass test. You know that's false. Nobody  
3           even knows what that test is. Nobody knows.

4           Moffett even attached the form to fill out, he  
5           knew what questions the insurance company was asking, he  
6           knew what mattered to the insurance company. It's all  
7           right there. When Quinones faxed that form, that's the  
8           wire, the crime is complete, and with that evidence you  
9           can convict him. Moffett made \$11,000 from this. That  
10          was the puppet master at work. And you can hear the  
11          puppet master at work in real-time.

12          Remember that phone call with his girlfriend,  
13          Julie Santarelli, when she called on Patient Leslie  
14          Griffith, Dr. Mishkel's patient, and this is Count 2 of  
15          wire fraud that you're going to be looking at. When you  
16          go into the jury room, listen to Exhibit 54-01, the call  
17          to CVS, and what you're going to hear is the CVS person  
18          says, "What's the diagnosis?" And she just says,  
19          "Hyperlipidemia," it rolls right off her tongue, because  
20          it's in the record. It's easy. But then she stumbles,  
21          she says "Homozygous Familial Hyperlipidemia," she still  
22          gets it wrong, but then she corrects it and she finally  
23          gets it out, "Homozygous Familial Hypercholesterolemia."

24          Now that's a lie, HoFH is not in that patient's  
25          medical record and Santarelli testified that Moffett was

1 right there. Now listen to it.

2 (Plays audio.)

3 Ladies and gentlemen, "He's telling me what to  
4 do," that's what she told you, and you know that's true  
5 because he bragged about it. There it is, "Griffith  
6 approved after Mishkel nurse appealed to BCBS over the  
7 phone. I was the puppet master as she spoke."

8 Santarelli's boyfriend, Mark Moffett, told her to  
9 lie and she did. Santarelli may not have known what  
10 HoFH was, but she knew it wasn't in the chart, that's  
11 why she couldn't just read it off the chart on that  
12 call. And Moffett, he made \$9500 from that. If you  
13 want to see his bonuses, you can look at Exhibit 312,  
14 they're all there. And let's talk about the rest of  
15 Dr. Mishkel's patients, there they are, and there are  
16 the counts, the corresponding counts.

17 For each of these counts, you have the treatment  
18 notes that show there was no diagnosis of HoFH. You  
19 then have the prescriptions, the statements of medical  
20 necessity with false information, the prior  
21 authorization forms with false information, you have the  
22 insurance letters with false information. Dr. Mishkel  
23 and Santarelli told you that those forms are in  
24 Moffett's handwriting. That's the same handwriting on  
25 the letter that Moffett gave to Teresa Caldwell, the

1 same writing that is in Mr. Moffett's employment file at  
2 Aegerion -- and that's in Exhibits 2 through 7, and here  
3 are examples.

4 In the upper corner, that's the letter that he  
5 gave to Teresa Caldwell. Here are the charts for Teresa  
6 Caldwell. (On screen.) You know the false information  
7 on these forms is in that handwriting. Here's another  
8 example. (On screen.) That's from the employment file.  
9 Look how "Nilesh Goswami" is written when you look at  
10 how it's written on the forms for Dr. Nilesh Goswami.  
11 This is an example of one of these forms. There's the  
12 handwriting you know. There's the diagnosis that  
13 Dr. Mishkel tells you did not exist. This is Wire Count  
14 6, Identity Count 13, it's an e-mail, that's your wire  
15 in this case.

16 And look also, there's a drug listed here,  
17 Nevacor, it says it's current. Now there's a treatment  
18 note from that day, it's Exhibit 101. Go look at it.  
19 There's no Nevacor that day. There is another note  
20 hidden away from 2003 -- a note from 2003 is not current  
21 in 2014. That is a false medication history, because  
22 Mr. Moffett knew that the insurance companies were  
23 looking at what other drugs patients were on. It was  
24 material to them. That is a trick to trick the  
25 insurance company. So let's talk about Teresa Caldwell

1 and the other patients.

2 Teresa Caldwell wasn't even Dr. Mishkel's patient,  
3 she told you that, Santarelli told you that, and Mishkel  
4 told you that, and they all told you there is no  
5 diagnosis of HoFH, and they all told you the real  
6 diagnosis was statin intolerance, and you know that  
7 Moffett knew that because he wrote it in the letter he  
8 gave to Caldwell, it says that Dr. Gill and Dr. Mishkel  
9 wanted it, wanted this drug for her because she was  
10 statin intolerant.

11 But then there's a lot of other gobbledygook in  
12 that letter, things about "LDL receptor activity" and  
13 "blunted response." There's no evidence of that in the  
14 record, that wasn't something she had ever heard from a  
15 doctor. I guess she heard that from Dr. Moffett,  
16 Dr. Moffett came up with that, Dr. Moffett apparently  
17 had information about her genes. Now Caldwell didn't  
18 get Juxtapid in the end, but you know what? Mark  
19 Moffett got \$2500 just for getting in those forms.

20 Roy Young? There's no diagnosis in Roy Young's  
21 chart either. Dr. Mishkel told you that he did not  
22 diagnose that man with HoFH, but Santarelli put it on  
23 the form and she did it because Moffett told her to,  
24 just like he told Tracy Shelabarger and just like you  
25 saw him tell Shelabarger and Santarelli in Exhibit 139.

1 And Moffett? Well he got \$9,000 on that one. And you  
2 know that Moffett knew he was committing fraud.

3 He has a good friend, Dr. Goswami. He goes to  
4 Dr. Goswami with a letter, Dr. Goswami looks at that  
5 letter and says, "No, I will not sign that letter  
6 because it has a false diagnosis," the diagnosis of  
7 HoFH. That diagnosis is not in the medical record.  
8 Dr. Goswami told you that this patient isn't even  
9 consistent with HoFH because of the triglyceride level,  
10 it excluded the diagnosis. But Moffett sent that letter  
11 anyway. And when the insurance company denied again, he  
12 sent a second letter, that's Exhibit 79, that's the one  
13 that Dr. Goswami told you he never even saw.

14 And then Dr. Dukkupati, the patient, Crystal  
15 Houston, there's that writing you know again. Now,  
16 Dr. Dukkupati, he told you he didn't diagnose this  
17 patient with HoFH, and that diagnosis again is not in  
18 the chart. And Dr. Dukkupati told you that this  
19 signature on this form right here, that's not his  
20 signature. But remember, like Dr. Goswami,  
21 Dr. Dukkupati told you that this patient's diagnosis  
22 isn't even consistent with HoFH because of the  
23 triglyceride levels on the patient.

24 Now, Mr. Moffett, he knew about that fact. You  
25 saw in Sarah Whipple's compliance decl. the criteria

1 that Aegerion itself used to find patients, if  
2 triglycerides are over 300, you're out, unless you have  
3 a genetic test. You saw all of those criteria in that  
4 compliance decl., they also have the triglyceride level.  
5 And you can look at the insurance form for Blue Cross  
6 Blue Shield, it also has the triglyceride level. He  
7 knew that. It's not consistent with HoFH, it's not  
8 HoFH, that's what the doctors testified to.

9 And so Dr. Dukkupati, he helps you understand a  
10 fundamental fraud here, that's the prescription itself.  
11 The attestation there is not valid, the doctor would not  
12 sign that form knowing that attestation was there. And  
13 again, ladies and gentlemen, "Here, Doctor, sign this,"  
14 that is not getting a valid attestation. And you know  
15 the insurance company wouldn't pay if it weren't a  
16 prescription. And you know from Heather Rezendes, the  
17 Compass lady, Compass wouldn't even process a claim if  
18 they didn't have that prescription. And Moffett, he got  
19 \$9,500 for this one.

20 Now Goswami, Mishkel, Dukkupati, they were  
21 Moffett's friends, they trusted him, they knew him, they  
22 socialized with him, he was welcome in their offices,  
23 their office staff knew him, he could go in when he  
24 wanted, he had access to the fax machine. He got  
25 signatures on forms, he had to, the fraud doesn't work

1 without signatures. The signatures looked like the  
2 doctors' signatures. They have to. You don't commit a  
3 crime like this unless the signatures look right, you've  
4 got to get them one way or another.

5 How about the Mishkel swoosh we talked about?  
6 It's not that hard, try it yourself, "zoop," there it  
7 is. But you know Dr. Mishkel wasn't signing letters  
8 when he wasn't even in the office, when he was away in  
9 another place testifying, you know he wasn't signing  
10 letters as if he were the "President of Prairie  
11 Cardiovascular," no one signs using a title they don't  
12 have. It's just a mistake he made?

13 I expect Judge Young is going to tell you an  
14 additional fact here and that is -- he's not going to  
15 tell you a fact, he's going to tell you a law about the  
16 facts, and that is for aggravated identity theft, you  
17 can't give permission to someone else to use your  
18 identity to commit a crime, that's not with lawful  
19 authority. I'll say that again. There is no lawful  
20 authority to go out and use an identity to commit a  
21 crime. The false information on all of these forms,  
22 when you look at the prior authorizations, it's in the  
23 handwriting you know.

24 So we come to Dr. Nallamotheu and there's that  
25 writing you know. A diagnosis of HoFH? Yes.

1 Dr. Nallamothu told you that he did not diagnose Janet  
2 David with HoFH. You can look at her chart. It's just  
3 not there. But it's the same handwriting. It's the  
4 same handwriting on the forms in Mattoon with Dr. Dande,  
5 it's the same handwriting in the office of Dr. Goswami,  
6 it's the same handwriting right there. There's a common  
7 denominator and that denominator is the defendant, Mark  
8 Moffett.

9 Now, Janet David, she didn't get this drug and on  
10 the handwriting -- you can compare this handwriting to  
11 know for a fact she didn't. On one side here you've got  
12 the form for Terry Twigg. Dr. Goswami testified that  
13 that is Mark Moffett's handwriting. And on the right  
14 you've got Janet David's. (On screen.) Just look at  
15 it, it's clear. As I said, Janet David, she didn't get  
16 Juxtapid, but Mark Moffett got \$2500 for getting that  
17 form right there.

18 You've also seen the forged letter from  
19 Dr. Nallamothu. Dr. Nallamothu did not write that  
20 letter. You know who wrote that letter. Just compare  
21 the letters from all the different doctors, they all  
22 pretty much look the same. They've even got the same  
23 titles.

24 Now in January of 2015, Moffett admitted to the  
25 Aegerion compliance officer, Sarah Whipple, that he had

1 written an assurance appeals letter, but he didn't tell  
2 Whipple about the letter for Terry Twigg, and he didn't  
3 tell Whipple about the letter for Teresa Caldwell, and  
4 he didn't tell Whipple about the letter for Barbara  
5 Lawrence, and he didn't tell Whipple about the letter  
6 for Desandro, he didn't mention any of them because he  
7 was hiding it because he knew it was wrong, the only  
8 reason why he wouldn't say that. She asked him, "Are  
9 there any other letters?" and he said "No."

10 Now that was January of 2015. And Whipple told  
11 him, "Don't write letters like that, Mark, don't do it."  
12 And you've seen the Nallamothu letter, that was  
13 September of 2015. Moffett knew what he was doing was  
14 wrong.

15 Ladies and gentlemen, this is a scheme to defraud.  
16 You know what happened here. You've seen that fraud  
17 plays on trust. Fraud has to look real to work, it has  
18 to look real. Fraud is getting money with deception.  
19 Deception works because it can trick people. Fraud's a  
20 show. There is no reasonable doubt here, Mark Moffett  
21 was pulling the strings on a fraud scheme. Mark Moffett  
22 committed these crimes. You should return the only  
23 verdict that is consistent with all the evidence that  
24 you have received and that is guilty on all counts.  
25 Thank you.

1 THE COURT: Mr. Parker.

2 MR. PARKER: Thank you, your Honor.

3

4 CLOSING ARGUMENT BY MR. PARKER:

5 Good morning, everyone. When I first got to talk  
6 to you directly at the start of this trial, I told you  
7 that the evidence would show that Mark Moffett didn't  
8 force a single doctor to put a patient on Juxtapid, he  
9 didn't pay any doctor to put a patient on Juxtapid, he  
10 didn't bribe a doctor or nurse to put a patient on  
11 Juxtapid, he didn't trade on friendships or romance to  
12 get a patient on Juxtapid, he didn't trick anyone to put  
13 a patient on Juxtapid, and he certainly didn't go behind  
14 doctors' backs to get Juxtapid prescribed for their  
15 patients without their knowledge, and that's what the  
16 evidence showed. Didn't it?

17 I told you that the evidence was going to show  
18 that Mr. Moffett, what he did was help busy doctors,  
19 busy nurses, and busy staff in doctors' offices get the  
20 paperwork done for Juxtapid. They asked for his help,  
21 they wanted his help, they expected him to help, and he  
22 helped, in good faith, honestly, with a sincere desire  
23 to help make sick people better. And I think the  
24 evidence showed that.

25 And I told you that the evidence would show that

1 Mark Moffett believed and trusted the doctors, some of  
2 whom are his friends, that they knew what they were  
3 doing, that they were appropriately selecting patients  
4 to put on Juxtapid that had HoFH, and that the patients  
5 who the doctors wanted to prescribe Juxtapid for did in  
6 fact have HoH -- HoFH, and were proper Juxtapid  
7 patients, and I think the evidence showed that as well.

8 Now I wish I would have said then that the  
9 evidence also would show that Mr. Moffett did not pull  
10 or control the strings, that the evidence would show  
11 that he was the farthest thing from the "puppet master."  
12 Did he make a poor choice of words when he said that?  
13 Yeah, probably. Was it anything more than braggadocio  
14 to show his boss that he could get things done and was  
15 capable of doing his job?

16 If you learned anything, from sitting here over  
17 these last few weeks, is that it was incredibly  
18 difficult to get an insurance company to approve  
19 coverage for Juxtapid. Test claims, verbal  
20 authorizations, prior authorizations, clinical reviews,  
21 denials, appeals, peer-to-peer phone calls, it's an  
22 achievement when you can get through all of that and get  
23 Juxtapid approved by an insurance company for a patient  
24 who needs it. It's an accomplishment that would spark  
25 some pride and satisfaction and maybe a pat on your own

1 back, something you want to take credit for with your  
2 boss. So instead of name calling, let's look at the  
3 evidence. And first let's look at the lay of the land.

4 Juxtapid was approved by the FDA for lowering  
5 cholesterol in patients with HoFH. The FDA gave no  
6 guidance and set no criteria for diagnosing HoFH. It  
7 could have required genetic testing, but it didn't. A  
8 clinical diagnosis of HoFH would suffice.

9 The FDA could have set the criteria for a clinical  
10 diagnosis, but it didn't do that either, so it was up to  
11 the medical community to define the criteria for  
12 clinically diagnosing HoFH. And you've seen that there  
13 was no consensus in the medical community on that, there  
14 was no single uniform set of criteria that every doctor  
15 would apply to make a clinical diagnosis of HoFH, that  
16 much is clear from the slide that Mr. Basil liked, when  
17 he had Sarah Whipple on the stand, that showed all of  
18 the different criteria on the two sides, from scholarly  
19 articles, for diagnosing clinically HoFH, with varying  
20 minimum LDL levels, um, differing on the nature of  
21 family history, high cholesterol, or premature cardiac  
22 events, or with other differences. And then there's the  
23 Phase 3 clinical trial for Juxtapid in which all  
24 patients had undergone genetic tests and were confirmed  
25 with HoFH. The LDL levels there ranged from 152 and up,

1 and at the low end much lower than the criteria on the  
2 slide that Mr. Basil liked.

3 The article that Dr. Dukkipati e-mailed to  
4 Mr. Moffett recognizes that clinical diagnoses criteria  
5 differ and it identifies some common or core criteria  
6 for diagnosing FH, HeFH, and HoFH. And I bet you never  
7 thought you would know what I meant by saying that  
8 sentence before you sat on this trial. Those are  
9 important aspects of the lay of the land, the world that  
10 Mr. Moffett joined when he started at Aegerion, a  
11 clinical diagnosis was all that was required, criteria  
12 varied, criteria typically included high LDL levels,  
13 family history of cath or cardiac conditions or high  
14 cholesterol. Doctors, who were properly informed that  
15 Juxtapid was for HoFH and were made aware of that  
16 clinical criteria, would be able to identify HoFH  
17 patients in their practices.

18 I want to talk about these doctors who came in  
19 here and said some incredible things, I think lie after  
20 lie after lie, and I want to start where we ended with  
21 Dr. Nallamotheu, who's been a cardiologist in the United  
22 States for 20 years, I think he said, and who went  
23 through a residency as a doctor and then a multiyear  
24 fellowship in cardiology before he could start  
25 practicing, who writes coherent complicated medical

1 notes for his patients in perfect English, who reads  
2 technical and professional journals written in English,  
3 yet he tried to tell you that he could not possibly have  
4 written an appeal letter for Janet David because English  
5 is his second language, he would not possibly know how  
6 to use those words. And that's absurd.

7 He also had half a dozen cockamamie reasons why  
8 his calendar is really not his calendar. He has no  
9 control over what's in it. He has no idea what's in it.  
10 He apparently has no input into what's in it. If it  
11 says he has a meeting scheduled with Mr. Moffett, he has  
12 absolutely no idea how that could have gotten in there  
13 because, boy, he sure doesn't remember meeting  
14 Mr. Moffett in 2014, months before he prescribed  
15 Juxtapid for his patients, including Janet David.  
16 Didn't he have to say that? Didn't he have to say,  
17 "Meeting"? "What meeting, I never had a meeting?"  
18 Because if he had a meeting with Mark Moffett in his  
19 office on November 4th, 2014, it would have to have been  
20 about Juxtapid.

21 Why else would he see Mark Moffett? They weren't  
22 friends. He was a drug rep selling one drug. They had  
23 no personal relationship. It wouldn't have been a  
24 social meeting. If he admitted that he had a meeting  
25 with Moffett, then pretty much everything else he said

1 would unravel, like "I never met or spoke with Mark  
2 Moffett." Like "I didn't know what Juxtapid was till  
3 the agents told me about it in 2018." Like he didn't  
4 know what HoFH was? How about that one?

5 Ms. Hemani asked him how he learned about new  
6 medications that were pertinent to his practice and he  
7 said something about CMA meetings, office seminars,  
8 reading medical journals, interactions with his  
9 colleagues, but he didn't really know anything about  
10 Juxtapid in 2014 and 2015. All of his other colleagues  
11 did. So that's just mind boggling.

12 And how did a script get written for Juxtapid for  
13 Ms. David in the first place? There was no treatment  
14 note in the medical file -- well there is a treatment  
15 note in the medical file, it's marked as an exhibit,  
16 it's by Dr. Nallamotheu's nurse, Jenn Law, and she says  
17 that they're going to talk to Ms. David about Juxtapid.  
18 So how did that happen? Did she do it on her own? Why?  
19 Why would a nurse make that kind of decision? Or was  
20 Mr. Moffett behind it, did he somehow get access to  
21 Nallamotheu's EMR -- medical records? "Take Janet David  
22 out, try to get her on Juxtapid behind Dr. Nallamotheu's  
23 back," where's the evidence for that? If that's what  
24 happened, presumably Jenn Law would have known that.  
25 Where is she? Why didn't they fly her in from Illinois

1 to testify that Moffett was behind this? Doesn't it  
2 make more sense that Nallamothu wanted Janet David on  
3 Juxtapid and told Jenn Law, who told Ms. David, and made  
4 a note of it in the records, and then brought in  
5 Aegerion, including the onboarding nurse?

6 But Nallamothu's most consequential lie is that he  
7 signed none of the paperwork. He signed it all. And  
8 you know that from when I walked you through it on the  
9 presenter. I'm not going to belabor this because you've  
10 got all of that material and you can look at it in the  
11 jury room during your deliberations. There's the full  
12 signatures that we know are his, and the full signature  
13 on the top employment agreement, which is marked as an  
14 exhibit, and we have the full signatures on the Juxtapid  
15 paperwork, and you could look at those. One we know is  
16 his, two he said previously were his, but now they're  
17 not, and you can make up your minds. They're identical.  
18 And the short, um, signatures that I pulled out of the  
19 medical records and compared to the other Juxtapid  
20 paperwork is his as well.

21 So let's talk about Dr. Goswami. At least he  
22 admitted that he signed the Juxtapid form and the  
23 statement of medical necessity for his patient,  
24 Mr. Twigg, and the REMS enrollment form, but he also  
25 said that the first time he saw these forms was when the

1 agents showed them to him during their interviews.

2 What? "You signed paperwork in 2014 and then you say,  
3 'I've never seen it before the agents showed it to me'?"

4 He also said that Fenofibrate was for treating  
5 triglycerides and that the entry for a treated LDL  
6 level, that I think Mr. Basil showed you, was really an  
7 untreated level, because Fenofibrate is not for lowering  
8 cholesterol. Well I put in a label for Fenofibrate, the  
9 first page, and the first indication is for lowering LDL  
10 cholesterol.

11 But again, Goswami's biggest and most  
12 consequential lie is about other signatures. He says  
13 that the signatures are not his on what I call the  
14 "proactive letter," um, Exhibit 77, Mr. Basil put it up,  
15 where he says he's writing "proactively to get approval  
16 for Juxtapid," and the second letter, the appeal letter.  
17 The proactive letter is the one that he said Moffett  
18 offered to write for him, he said "Okay, write it," he  
19 said Moffett showed it to him, and then Goswami says, "I  
20 can't sign that, it's not true." But he told the agents  
21 that it was his signature on it. "I can't sign that,  
22 it's not true, but boy that really looks like my  
23 signature." So that's more mind boggling, right?

24 So compare the signatures on those letters with  
25 his known signatures that he's admitted to on the

1 statement of medical necessity, the prescription, the  
2 REMS enrollment form, and they're the same.

3 Dukkupati also had the same issues with denying  
4 here at trial that signatures were his, on several  
5 documents, two scripts for Crystal Houston, and a  
6 statement of medical necessity and a prior authorization  
7 form for Roy Young, he had denied that he signed any of  
8 those documents. And then when I asked him if he told  
9 the agents that he did sign all of them previously, on  
10 more than one occasion, he said, "I can't remember."  
11 Really? Is that the kind of thing that you don't  
12 remember? I mean you might not remember whether a  
13 specific slide in a decl. was shown in an educational  
14 dinner in 2014, but would you really not remember  
15 whether you identified your signature previously to an  
16 FBI agent who's asking you about your signature and your  
17 name on this paperwork? Fortunately we have a known  
18 sample of Dr. Dukkupati's signature again from the Pao  
19 Bistro sign-in sheet. I put it up with his other  
20 signatures. You all saw it. Look at everything. He  
21 signed everything.

22 Now there's something curious about Julie  
23 Santarelli's testimony. I asked her something, she gave  
24 an answer, and then I saw her look directly at  
25 Ms. Hemani and mouth the word "Sorry." And maybe all of

1       you saw that --

2               MR. BASIL:  Objection.

3               THE COURT:  No, you can't testify, so that's not  
4       evidence.  He did ask her about it, and he may assume  
5       that the jury saw something.  You may argue from that,  
6       Mr. Parker.

7               MR. PARKER:  Maybe all of you saw that, maybe you  
8       didn't.  Maybe some of you saw it, maybe you didn't.  
9       But that's not right.  Witnesses are supposed to come in  
10      here and tell the truth, not tow the government line.

11              And what about leaving out of her education her  
12      bachelor of science degree in biology?  She said that  
13      Ms. Hemani only asked her about her nursing training,  
14      but that's again for you to remember, whether or not  
15      that was the question, and if that's how Ms. Hemani did  
16      phrase the question, why did she put it that way?  To  
17      bolster a suggestion that Mark Moffett would be able to  
18      take advantage of Ms. Santarelli, to pull her strings?

19              And let's talk about Mishkel's signature, the "G"  
20      swoosh or the squiggle.  I think he ultimately admitted  
21      that because he didn't remember seeing any of the  
22      documents with that "G" on it, he could actually have  
23      signed them all.  Every "G" swoosh you have seen could  
24      have been actually written by Mishkel or by Santarelli,  
25      who had authority to sign on Mishkel's behalf.  And

1 isn't it impossible to determine who put the "G" on  
2 those documents? I mean it's not like the "Dukkipati"  
3 and all of those signatures which looked complicated and  
4 hard to imitate.

5 We know Julie Santarelli brought one draft letter  
6 of appeal to Mishkel, but she's not sure which one, for  
7 his review, and she says he approved it and it was sent  
8 out. She says she's not sure if Mishkel signed it, but  
9 why wouldn't he? He read it. He approved it. Why  
10 wouldn't he sign it too?

11 And we also know that Mishkel could have had  
12 Ms. Santarelli draft another appeal letter, he thought  
13 it might have been the Barbara Lawrence one, and he said  
14 that he may have referred it to her to draft. If that's  
15 the case, wouldn't it make sense that she signed that  
16 letter too, or that Mishkel did?

17 My point being that if the government contends  
18 that Mr. Moffett not only customized appeal letters for  
19 Mishkel's use, but signed them as well, the state of the  
20 evidence is nowhere near proof beyond a reasonable doubt  
21 that he did that. If Mishkel signed the appeal letters,  
22 particularly after reviewing and approving one of them,  
23 that's a further indication that Mark Moffett reasonably  
24 believed that Mishkel's patients actually had HoFH. He  
25 already would have signed this prescription and this

1 statement of medical necessity, the appeal letter comes  
2 later. The statement of medical necessity and the  
3 script say the patient had HoFH. The appeal letter says  
4 the same thing.

5 Goswami, Mishkel, and Dukkipati, all say they were  
6 not prescribing -- or they were prescribing off-label.  
7 They say that now, that they were prescribing off-label  
8 to treat nonHoFH patients, and that's all well and good,  
9 but the real question, and one of the critical questions  
10 you need to answer, is did Mr. Moffett know that? Did  
11 the government prove that beyond a reasonable doubt?  
12 And, no, there's no evidence of that, not even  
13 whatsoever, let alone beyond a reasonable doubt.

14 First and foremost, not one of these doctors say  
15 that they told Mr. Moffett they were prescribing  
16 Juxtapid off-label for nonHoFH patients. None of them  
17 said they told Moffett, "I don't have any HoFH patients,  
18 but let's try this out on patients who don't have it and  
19 see if it works." Goswami didn't say that. Mishkel  
20 didn't say that. Dukkipati didn't say that. And none  
21 of them put in their medical records that they were  
22 prescribing for patients -- um, Juxtapid for patients  
23 off-label who didn't have HoFH. None of them even told  
24 their patients they were prescribing Juxtapid off-label,  
25 even though they knew that the only FDA-approved

1       indication for it was HoFH. If Goswami, Mishkel, and  
2       Dukkipati, were prescribing Juxtapid off-label for  
3       patients who didn't have HoFH, that was a close secret  
4       that only they knew, because they never said it to  
5       Moffett and they never made any mention of it anywhere  
6       in their records, and they didn't even tell their  
7       patients about it.

8               So what they did say to Mr. Moffett about Juxtapid  
9       shows that they knew what it was for. Mishkel e-mailed  
10      Mr. Moffett with the article from a journal on January  
11      14th, right after Mr. Moffett started with Aegerion,  
12      because he was concerned whether Juxtapid was effective.  
13      Mr. Moffett e-mailed back that the article didn't  
14      specifically address HoFH, but he would fully research  
15      it. You have this e-mail chain, it's in evidence, and  
16      it's back and forth in one day.

17             Mr. Moffett had no reason to think that anybody  
18      other than Mishkel would ever see that e-mail -- his  
19      friend. If Mr. Moffett intended to encourage doctors to  
20      market Juxtapid to patients who didn't have HoFH, a  
21      private e-mail to his friend would have been the perfect  
22      place to do it, "Don't worry, Greg, it's good for  
23      nonHoFH patients too, you can prescribe the heck out of  
24      it," is what he would have said if that's what he  
25      thought and believed.

1           Dukkipati e-mailed Mr. Moffett a different article  
2           from a different scholarly journal that unequivocally  
3           said that Juxtapid was for treating patients with HoFH,  
4           that's in evidence too. So what these doctors did not  
5           say, "We're prescribing Juxtapid off-label," and what  
6           they did say, in the Mishkel and Dukkipati e-mails  
7           referencing journal articles about what Juxtapid was  
8           for, shows that they fully understood what it was for.

9           And what about the other way around, is there any  
10          evidence that Mr. Moffett was encouraging these doctors  
11          to prescribe off-label for patients who didn't have  
12          HoFH? And I think on balance that's a "No" too. The  
13          evidence shows that Mr. Moffett consistently made  
14          efforts to educate these doctors that Juxtapid was only  
15          for treating HoFH. He didn't always use that term in  
16          his e-mails and Mr. Basil put up three e-mails from the  
17          course of two years of selling Juxtapid, um, that  
18          Mr. Moffett didn't put the term "HoFH" in the e-mails,  
19          but what he put in those e-mails was the kinds of things  
20          that patients would have if they were suitable for  
21          Juxtapid, what he put in those e-mails was the general  
22          criteria for diagnosing Juxtapid clinically.

23          On the whole, the evidence that you'll have, and  
24          you'll see it all, was that Mr. Moffett was upfront and  
25          explicit that Juxtapid was for treating HoFH. You have

1 the August 24, 2014 infamous Pao Bistro meeting that  
2 nobody can remember anything about. You have the July  
3 2014 e-mail, that's also marked in evidence, from  
4 Mr. Moffett to all the doctors, saying, um, there's a  
5 Phase 3 study, and of course the Phase 3 study, which is  
6 attached, is on HoFH and it's all about how the patients  
7 have HoFH and how Juxtapid works to treat HoFH.

8 And Mishkel didn't even admit that Mark -- he did  
9 admit that Mr. Moffett told him that Juxtapid was for  
10 treating HoFH, but he had to say that because he said it  
11 before to government investigators. But he added  
12 something new at trial, something he'd never said to the  
13 government investigators in his six interviews and in  
14 his sworn-under-oath prior testimony. Dr. Mishkel said  
15 that Mr. Moffett also told him that Juxtapid was not  
16 just for patients with HoFH, it was also an alternative  
17 for people who have high cholesterol and had no other  
18 alternative. In other words, Mishkel was saying,  
19 "Moffett told me it could be used off-label." But he  
20 had been interviewed six times and he had given  
21 testimony under oath and he had never said that before.

22 Now, the Dande, Gough, Quinones, Gordon Hurst  
23 piece of this case is different because those, um,  
24 witnesses -- well because Dande doesn't say how he's  
25 prescribing off-label, Dande says, "I thought Juxtapid

1 was for FH, and Gordon Hurst had FH," and so Dande  
2 thought he was prescribing on-label. Then he reached  
3 out to Marti Quinones, Marti Quinones reached out to the  
4 previous Juxtapid rep, that rep reached out to  
5 Mr. Moffett, and Mr. Moffett ended up calling them at  
6 that office. And it's important, and you might not have  
7 picked up on this, because it's a detail, but that  
8 office is in Mattoon, Illinois, Dande's office and  
9 Gough's office is in a different town than Mishkel's and  
10 Goswami's and Nallamothu's, that was in Springfield. So  
11 this was the first time that Mr. Moffett called on the  
12 Mattoon office. And this is also, if you put all of the  
13 evidence together, the first and earliest date that  
14 Mr. Moffett, um, had called on any of these doctors  
15 offices and started up the process for prescribing  
16 Juxtapid, February 28th, 2014. It was only a month and  
17 a half after Mr. Moffett started.

18 THE COURT: 5 more minutes, Mr. Parker.

19 MR. PARKER: Your Honor, well may I have 10 more  
20 minutes?

21 THE COURT: 5.

22 MR. PARKER: The government makes a big deal out  
23 of Gordon Hurst not being Gough's patient, but isn't the  
24 question, did Mr. Moffett know that? Did he know, when  
25 he was called to that office, because they had

1 identified a Juxtapid patient, that Hurst was Dande's  
2 patient, not Gough's? Dande didn't even know that.  
3 Dande thought at the time that they were both treating,  
4 um, Hurst. So how is Mr. Moffett supposed to know that?

5 But the most important thing out of all of this,  
6 um, the Hurst-Dande evidence, is that when it came time  
7 to fill out the prior authorization form on March 19th,  
8 and Mr. Basil showed you the e-mail from Mr. Moffett to  
9 Marti Quinones, um, the prior authorization -- the  
10 statement of medical necessity and the script had  
11 already been filled out, it had already been signed by  
12 Allyson Gough, there had already been an attestation of  
13 HoFH for Mr. Hurst, and Dande's name is on the prior  
14 authorization form as the prescriber. Well how did that  
15 get there? That was filled out by, um, Marti Quinones,  
16 she identified her handwriting, um, which makes sense  
17 because Dande is the one who told her to reach out and  
18 call Moffett.

19 Now let's look at Aegerion. I just have a few  
20 minutes left, I guess, so I'm just going to say, and  
21 leave it to you to look at the evidence, that all of the  
22 witnesses I think lied about their awareness of the REMS  
23 program, all of them were aware of the need for the risk  
24 of liver hypertoxicity and the need for testing, and all  
25 of them knew -- and that was the very reason for the

1       REMS program.

2               I was going to talk about genetic testing, but  
3       I'll just say this. All of the witnesses came in here  
4       and said, um, "The only sure way to diagnose HoFH is  
5       with a genetic test, and I never did one, so my patient  
6       didn't have HoFH." There's a lot of evidence that came  
7       in in this case that undercuts that, and particularly  
8       the FDA approval of a clinical diagnosis diagnosing  
9       HoFH.

10              I want to end where I ended in my opening and  
11       that's that Mr. Moffett trusted these doctors, but he  
12       not only trusted them, he respected them. He trusted  
13       that they knew what HoFH looked like because he told  
14       them what HoFH looked like. He trusted that the one,  
15       two, or five patients out of the thousands that each of  
16       them treated had a clinical diagnosis consistent with  
17       HoFH. He trusted that the doctors were not prescribing  
18       Juxtapid off-label, they never told him that they were.  
19       He trusted them literally with the lives of his family  
20       members, his brother and father were treated by  
21       Dr. Goswami, Dr. Mishkel took care of Mr. Moffett's  
22       mother. They went to each other's homes, they ate each  
23       other's food. They went to football games together,  
24       they socialized, they did favors, they watched each  
25       other's kids when they needed it. They all knew

1 Mr. Moffett for many years professionally and some of  
2 them were his friends for many years.

3 I asked Mishkel if he prescribed Juxtapid because  
4 he wanted his patients to get better? And he said  
5 "Yes." And I said, "Isn't that what Mr. Moffett wanted  
6 too?" And he said "Yes." No hesitation, no double-talk  
7 or evasion on that question, one simple word, "Yes."

8 I've got two simple words, "Not guilty." Send  
9 Mark Moffett home with his family the way he walked into  
10 this courtroom today, as an innocent man, so he can put  
11 his life back together and back on track. Thank you.

12 THE COURT: A brief rebuttal from the government?

13 MR. BASIL: Yes, your Honor.

14 THE COURT: Brief. Go ahead.

15

16 REBUTTAL ARGUMENT BY MR. BASIL:

17 Ladies and gentlemen, Mr. Moffett must be the  
18 unluckiest man in the world because he has a drug for a  
19 one-in-a-million kind of patient and yet he found a  
20 whole bunch of them with doctors in just one practice,  
21 Prairie Cardiovascular, and the doctors, according to  
22 Mr. Parker, he just said they all diagnosed these  
23 patients clinically with HoFH, the only problem is the  
24 only person they told in the world was Mark Moffett.  
25 They didn't tell the patients, they didn't put it in

1     their charts. And when Mr. Parker says that the charts  
2     don't say that they were prescribing off-label? Ladies  
3     and gentlemen, that's just not true, if you go and look  
4     at those charts, they say they're prescribing Juxtapid  
5     for statin intolerance.

6             And, Mr. Moffett, was he marketing off-label?  
7     Yeah, it didn't say "HoFH." Did he have his own  
8     criteria, Dr. Moffett, did he have his own criteria?  
9     Well those criteria don't appear anywhere except in his  
10    e-mails, ladies and gentlemen.

11            And when Mr. Parker says, "Oh, Dr. Mishkel never  
12    said before that Moffett was marketing off-label for  
13    statin intolerance? Well, ladies and gentlemen, go look  
14    at Moffett's e-mail to Mishkel in the spring of 2014, I  
15    showed it to you in my closing argument, what he says  
16    there is it's for statin intolerant patients.

17            But let me just end with this simple fact for you.  
18    On the day that Mark Moffett was in Mattoon to get the  
19    signatures on the forms from Ally Gough, she told you  
20    that Gordon Hurst wasn't there that day. This is  
21    Exhibit 29 in evidence, it's the HIPPA consent form for  
22    Gordon Hurst, ladies and gentlemen, and there's that  
23    handwriting on it that you know.

24            Ladies and gentlemen, when that man needed a  
25    signature on a form and he needed to get it, he did it.

1 That's fraud. That's all you need to know. You should  
2 find him guilty on all counts.

3 (**EXCERPT** ends.)

4  
5 C E R T I F I C A T E

6  
7 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do  
8 hereby certify that the forgoing transcript of the  
9 record is a true and accurate transcription of my  
10 stenographic notes, of the aforementioned **EXCERPT**,  
11 before Judge William G. Young, on Thursday, December 19,  
12 2019, to the best of my skill and ability.

13  
14  
15 /s/ Richard H. Romanow 02-21-20

16 \_\_\_\_\_  
17 RICHARD H. ROMANOW Date  
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